JOSEF KRAMER and Others

# PETITION TO THE CONFIRMING OFFICER

#### on behalf of

FRANZ MOSSIER (Number 5), JUANA FORMANN (Number 6), ELISABETH VOLKENRATH (Number 7), and FERTA FFLERT (Number 8)

### in accordance with

Paragraph 12 of Appendix 'E' to IAOR Administrative Instruction No 104 of 1945, being British ets from Regulations for the Trial of War Criminals under the Royal Warrants cheed 14th June and 4th August 1945.

YOUR PULLICHERS were charged with COMMITTING A WAR CRIME in that they at MARANT - MISHN, Germany, between 1st October 1942 and 30th April 1945 when members of the MARHY - BELSEN Concentration Comp responsible for the well-being of the persons intermed there, in violation of the law and usages of War were together concerned with others also indicted as parties to the ill-treatment causing the deaths of and physical suffering to certain named and unmamed individuals all alleged to be Allied Nationals.

YOUR PRITIDITIES were further charged with COMMITTING A WAR INDED in that they at AUSUMANE, Foland, between 1st Coteber 1942 and 30th April 1945 when members of the staff of AUSCHITTZ Concentration Comp responsible for the well-being of the persons intermed there, in violation of the law and usages of War were together concerned with others also indicted as parties to the ill-treatment causing the deaths of and physical suffering to certain named and unnamed individuals all alleged to be Allied Nationals.

On 18th Movember 1945, after Trial, the accused FRANZ HOSSLER was found NOT GUILTY under the MIRCHNIZ Charge, and GUILTY under the AUSCHWITZ Charge.

On 19th Movember 1945 the following sentence was pronounced :-

To suffer Death by Hanging.

JUANA OCCAPE was found NOT GUILTY on the RELSEN Charge and GUILTY under the AUSCHWITZ Charge, and the following sentence was prenounced:-

To suffer Death by Hanging.

ELITA NATI VOLKANRATH was found GUILTY under both Charges and the following sentence was promounced:-

To suffer Death by Hanging.

HEATA ATHER was found GUILITY under the BELSEN Charge and NOT GUILITY under the AUSCHIERE Charge, and the following sentence was pronounced:-

To suffer imprisonment for 15 years.

YOUR PLITTICIERS in consequence now potition against the FUEDINGS and SENTENCES on the rounds following:-





- 1. That the I titioners are NOT GUILTY
- 2. THAT THE CHARGES AS IAID .. DO NOT DISCLOSE A WAR CRIME and therefore that the Hinding as incompetent.

In support of this ground of Petition the following submissions are respectfully made:-

- (a) Violations of the recognised and unchallenged rules of warfare must have a direct connection with the War, they stable concerned with military operations, and must be something the prevention of which is a means of protecting military operations. The acts alleged spainst your retitioners have none of these characteristics. They were, if they had been committed at all, consisted in the service of the Concentration Comp system which was a matter of German State Policy begun before the War, and, though continued throughout the War, would have proceeded after it if the German Nation had been the victors. It was a policy in no way related to the Presecution of the War and one which merely extended the scope of its operation during the War.
- (b) With certain exceptions not including the case in question, if a crime is consisted by an individual in the execution of a policy enjoined on him by his or her Government that crime is one which cannot be visited against the individual. It is a matter for high diplomatic action directed towards securing compensation by way of reparation, or, in the present instance, for accusation and conviction at the NOREMOURG Process. The Charge as laid is therefore irrelevant in respect of individuals.
- (c) If the actions elleged against your Petitioners be considered proved then they are common crimes and ought to be dealt with in ordinary criminal Courts as administered by Allied Military Government.
- (d) Where there is a conflict between International Law and a Government's directives to its subjects the subject is bound to obey his Government's directive. The rule of law which contends that a man must disobey at his own peril an order which must appear to him illegal and contrary to normal human standards does not apply to an order passing from the State to an individual, and concerns only orders from a superior to an inferior, the compulsion to disobey being based on the implication that protection will be afforded to the individual who refuses compliance.

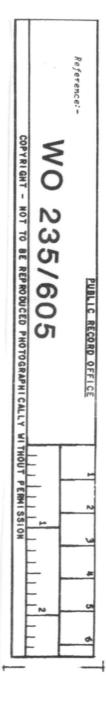
The Address by Colonel H.A. Smith as it appears in Pages 21 to 44 of Volume 45 of the Transcript of Evidence is referred to and respectfully adopted with regard to the above grounds and it is further respectfully submitted that in his Summing-up on these arguments before the Court the learned Judge Advocate General misdirected the Court.

STITICLS

THAT THE SENTENCES IS POSED ARE IN ANY EVENT UNWARRANTED AND/OR EXCESSIVE.

In support of this ground of Petition the following submissions are respectfully made:-

.........../3.



(3) As this Petitioner was found NOT CHILTY on the DEENT Charge it may be presumed that he was condemned because of his connection with Selections for the (as Chamber and/or his connection while the public hanging of four women accused of steeling exploraves.

As for as Gas Character Selections were consermed at its contended that the evidence before the Court fails to prove any wore than this Potitioner admits, i.e. that he was forced to be present to maintain order and that he took no selective or other malicious part. but, even if otherwise, it is respectfully asseitted that the defence of acting under coercion ought to be accepted or alternatively if it cannot to accepted as nullifying guilt it can and ought to be accepted in itigation of sentence, a principle accepted by all legal systems. ttention to the evidence adduced in his favour. This is contained in the evidence of FRIKA SCHOPF (Transcript Volume 24), the accused STAROWSKA (Questioned by the Court - Transcript Volume 40), the witness MONSTA (Transcript Volume 40 Page 19) and the accused HELFEA KOPPER (in Cross-Examination). This evidence demonstrates that this Petitioner did all he could to save victims intended for the Gas Chamber, that his presence on Selection Parades was impossible for him to avoid and that he did every thing in his power to improve camp conditions. Indirect evidence in support of this is (i) the absence of allegations of personal brutality, and (ii) the evidence which secured the finding of NOT CULTY on the ELSEN Charge.

As far as the Public Hanging is concerned it is contended that no responsibility can be laid on this Petitioner. Orders were received in circumstances demonstrating due legal process and only the duties of a public executioner were performed, properly as far as this letitioner was concerned.

## In respect of ELISA ETH VOLKENRATH.

The inference from the Finding in respect of this accused is that full attention was paid by the Court to Affidavit Evidence, and this Petitioner, who denies the truth of the allegations, respectfully suggests such evidence ought not to be relied upon in the imposition of a Death Sentence. In the case of witnesses who came before the Court and were subjected to Cross-Examination no allegations warranting such a penalty were made, with the possible exception of allegations that this Petitioner was present at and selected victims for the Gas Chamber at AUSCHAITZ.

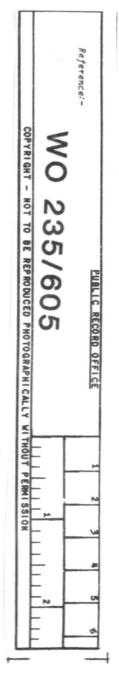
If the supreme penalty was inflicted because of the Gas Chamber allegations the same grounds of Petition as for the Petitioner WANT HOSSIER are adopted, with the exception that there is no evidence the Petitioner VOLKENRATH was instrumental in saving lives.

This Petitioner prays that the evidence be examined anew and the wide gulf which exists between written and oral evidence be particularly noted.

## . In respect of JUANA DORMANN.

Attention is respectfully drawn to the Oral Evidence against this Petitioner, and it is submitted that this evidence, with especial reference to the testimony of DORA SZAFRAN, is so contradictory as to dates that it ought to have been regarded as totally unreliable.

In respect of the Affidavit Evidence all the instances sworn to are alleged at a time when this Petitioner swore that she was NOT in the Camp in question, a matter as to which she was not shaken in Cross-Examination. It is further submitted that insufficient evidence exists on which to find this Petitioner was taking part in selections for the Gra Chamber or in ill-treatment by beating. So far as beating is concerned the Oral Evidence confirms her own admissions, the extent of which cannot be held to involve criminal liability.





#### Page 4.

. In respect of HERTA EHLERT.

This Petitioner respectfully prays that the evidence against her be considered anew and submits that even if accepted it does not warrant such a severe sentence. She submits that her replies to all the allegations against her are so reasonable and unshaken in Gross-Examination that they ought to have been accepted by the Court and that the Judge Advocate General ought to have directed accordingly.

15 . ,

Attention is also respectfully drawn to the evidence in favour of this I ctitioner by the witnesses JUTTA MADLUNG and INGH MADLUNG, concerning her conduct of RAVENSIRUK and admitted by the Prosecution. This Petitioner requests that this be taken into consideration for reduction of the sentence imposed, should the Finding not be reversed.

5. In respect of ALL Petitioners.

Reference is respectfully made to Closing Speech by Defending Council recorded on Pages 15 to 33 of Volume 46 of the Transcript of Evidence.

SIGNED for and on behalf of the Petitioners by MAJOR A.S. MURRO RASC, 2 Coy R.A.S.C. (Inf Bde), Defending Officer Appointed, this 20th day of November 1945.

A.S. minist

Defending Officer Appointed.

Copies in Translation to the Petitioners.

